IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2293 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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REGIONAL DIRECTOR - Appellant(s)
Versus
GOPAL GLASS WORKS LIMITED - Defendant(s)

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Appearance :
MR HEMANT S SHAH for Appellant(s) : 1,
MR BHARAT SHAH for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/05/2007

ORAL JUDGMENT

Admit.

1. Mr. Bharat Shah, learned Advocate appearing

on behalf of the respondent waives process of admission on behalf of the respondent.

2. Present First Appeal has been filed by the appellant – Employees State Insurance Corporation through its Regional Director under Section 82(2) of the E.S.I.Act, 1948 (“the Act” for short) challenging the order dated 06.01.2006 passed by the Employees' State Insurance Court, Ahmedabad in E.I.Application No. 29 of 1996.

3. The respondent Company submitted an application under Section 75 of the Act against the decision of the Corporation (C-18) dated 26.04.1995 and 03.05.1996 by which the respondent Company was directed to pay contribution under the E.S.I.Act. That the learned E.S.I.Court, Ahmedabad by its impugned judgment and order dated 06.01.2006 allowed the said application on the ground that before issuance of the said notices a reasoned order as required to be passed under Section 45 of the Act determining the amount of contribution has not passed and therefore, the same was in breach of principles of natural justice. Being aggrieved and dissatisfied by the said order, the appellant has preferred the

present appeal.

4. Shri Hemant Shah, learned Advocate appearing on behalf of the appellant has produced on record the order passed under Section 45-A of the Act in which it is specifically mentioned that opportunity was given to the employer and after affording the personal hearing on 21.08.1995 and after further hearing the order has been passed and thereafter, notices for recovery were issued and therefore, it cannot be said that the said demand was in breach of principles of natural justice.

5. Shri Bharat Shah, learned Advocate appearing on behalf of the respondent Company is shown the notices as well as the order passed under Section 45-A of the Act, which seems to have been passed after giving opportunity to the respondent-Company. However, Mr. Shah, learned Advocate appearing on behalf of the respondent-Company submitted that as the same has not been produced before the E.S.I.Court, he is not in a position to make any comment on the same.

6. Now in the backdrop of above order and notices, if ultimately the Corporation is in a

position to establish that the impugned demand were after the order under Section 45-A of the Act and after giving opportunity to the respondent-Company, in that case entire scenario will be changed and under the circumstances, the matter is to be remanded to E.S.I.Court for deciding the same afresh and it will be open for the appellant to produce all the documents produced before this Court i.e. Notices as well as the order passed under Section 45-A of the Act.

7. For the reasons stated above, the appeal succeeds. The order dated 06.01.2006 passed by the E.S.I.Court, Ahmedabad in E.S.I.Application No. 29 of 1996 is hereby quashed and set aside. The matter is remanded to the E.S.I.Court for deciding the same afresh in accordance with law and on merits. It will be open for the appellant to submit notices as well as order passed under Section 45-A of the Act and submit before the E.S.I.Court that before impugned notices/demands a reasoned speaking order has been passed under Section 45-A of the Act and that too after giving opportunity to the respondent-Company.

8. In the facts and circumstances of the case,

E.S.I.Court is directed to decide and dispose of the application on remand within a period of 6(six) months from the date of receipt of this order. The appeal is accordingly allowed. However, there shall be no order as to costs.

[M.R.Shah, J.]

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